

City of Alexandria, Virginia

MEMORANDUM

DATE: JUNE 7, 2005

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: JAMES K. HARTMANN, CITY MANAGER SUBJECT: APPROVAL OF THREE LICENSE AGREEMENTS WITH THE POTOMAC RIVERBOAT COMPANY TO BERTH THE *CHERRY BLOSSOM*, *MISS CHRISTIN* AND *MISS MALLORY* IN COMMERCIAL DOCK SPACE AT THE CITY MARINA

ISSUE: Approval of amended licenses agreements with Potomac Riverboat Company for the *Cherry Blossom*, *Miss Christin* and *Miss Mallory* to align the terms of these agreements with those of the *Matthew Hayes* and *Admiral Tilp*.

RECOMMENDATION: That City Council approve and authorize the City Manager to execute the attached three license agreements with Potomac Riverboat Company, allowing it to berth the *Cherry Blossom* (Attachment 1), *Miss Christin* (Attachment 2), and *Miss Mallory* (Attachment 3) in commercial dock space at the City Marina.

DISCUSSION: On December 14, 2004, Council approved license agreements between Potomac Riverboat Company and the City for the *Matthew Hayes* and the *Admiral Tilp*. At that time Council directed staff to prepare new license agreements for Council action which would align the terms of the existing license agreements for Potomac Riverboat Company's three other vessels, the *Cherry Blossom*, *Miss Christin* and *Miss Mallory*, with the terms that Council approved for the *Matthew Hayes* and the *Admiral Tilp* on December 14. Accordingly, the attached three proposed license agreements terms are amended as discussed below.

The proposed ending date for all the licenses is December 31, 2009. Therefore, the license term for the *Miss Mallory* is extended for two years, i.e., from January 1, 2007, to December 31, 2009. The proposed ending date for the licenses for the *Cherry Blossom* and the *Miss Christin* are extended from June 30, 2007, to December 31, 2009, or for a period of two and one-half years.

Also, identical to the terms of the *Matthew Hayes* and the *Admiral Tilp*, a "right-of-first refusal" provision requires the City to negotiate in good faith with the Potomac Riverboat Company for an additional three year term to renew all five of the licenses before the City would solicit bids from other interested parties.

With regard to all other license terms, the proposed license agreements continue to obligate Potomac Riverboat Company to pay the City license fees which increase at 2.5% over the

preceding year until December 31, 2009. These result in additional license fees from the licenses current termination date until December 31, 2009, of \$62,845 for the *Cherry Blossom* and \$44,947 for the *Miss Christin* for the additional two and one-half year terms and \$28,373 for the *Miss Mallory* for the additional two year term.

FISCAL IMPACT: The total expected revenue to the City over the additional terms of the proposed license agreements is \$136,165 including \$62,845 for the *Cherry Blossom*, \$44,947 for the *Miss Christin*, and \$28,373 for the *Miss Mallory*.

ATTACHMENTS:

Attachment 1. Proposed license agreement between the City of Alexandria and the Potomac Riverboat Company for the operation of the *Cherry Blossom*

Attachment 2. Proposed license agreement between the City of Alexandria and the Potomac Riverboat Company for the operation of the *Miss Christin*

Attachment 3. Proposed license agreement between the City of Alexandria and the Potomac Riverboat Company for the operation of the *Miss Mallory*

STAFF:

Mark Jinks, Assistant City Manager

Kirk Kincannon, Director, Recreation, Parks and Cultural Activities

Julie Rasmussen, Division Chief, Recreation, Parks and Cultural Activities

LICENSE AGREEMENT

THIS AGREEMENT is made this _____ day of _____, 2005, by the City of Alexandria, a municipal corporation of Virginia ("Licensor"), and Potomac Riverboat Company, a Virginia general partnership ("Licensee").

WHEREAS, Licensee desires to operate a charter service using a sternwheel paddleboat, the Cherry Blossom, from the Alexandria Marina in the City of Alexandria, Virginia; and

WHEREAS, Licensor owns the Alexandria Marina which is suitable for docking ships; and

WHEREAS, Licensor is willing to permit Licensee to use the Alexandria Marina for docking purposes and passenger and service access in accordance with the terms and conditions set forth below;

WHEREAS, Licensor and Licensee had an agreement to permit Licensee to use the Alexandria Marina for the purposes stated above from July 1, 2002, through and including June 30, 2007;

WHEREAS, in accordance with City Council's directive on December 14, 2004, to bring the terms of all license agreements between Licensor and Licensee consistent, as applicable to the terms of the license agreements approved by City Council on December 14, 2004, for the Admiral Tilp and the Matthew Hayes, the parties agree to amend the existing license agreement for the Cherry Blossom; and

NOW, THEREFORE, in consideration of the premises, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Representations. By executing this Agreement, the Licensee warrants that it is the legal operator of the vessel described in paragraphs 14 and 15 below (the "Vessel") and is authorized to enter into this Agreement.

2. Applicability of City, State and Federal Law. This Agreement is subject to title 6, chapter 3 of the Alexandria city code and all applicable provisions of federal, state and local law. In particular, this agreement is subject to, and Licensee shall comply with, the criminal, fire, health and safety laws of the City of Alexandria and the Commonwealth of Virginia pertaining to the operation of the Vessel. Licensee shall permit officers and employees of the City of Alexandria charged with the enforcement of such laws to board and inspect the Vessel for the purpose of enforcing such laws.

3. Rules and Regulations. Licensee shall comply with all applicable rules and regulations of the City of Alexandria, including the Rules and Regulations of the Alexandria Marina which are set forth in Attachment A to this agreement and which are incorporated by reference into this Agreement as if fully set forth herein. The Licensee shall also comply with any rules and regulations of the city or of the Alexandria Marina which are adopted subsequent to the execution of this Agreement unless such rules are manifestly unreasonable in their application to Licensee.

4. Insurance. Licensee shall certify to the satisfaction of the Licensor that the Licensee and the Vessel are covered by:

(a) property damage insurance in an amount sufficient to replace the Vessel in case of its total destruction;

(b) liability insurance in an amount not less than \$1,000,000 per person per occurrence and \$3,000,000 in the aggregate per occurrence which insures the Licensee (i) against claims of personal injury and property damage arising from the negligent operation of the Vessel by the Licensee or Licensee's agents and employees;

(c) insurance in the amount of not less than \$1,000,000 per occurrence which insures Licensee, regardless of fault or negligence by Licensee or any agent or employee of Licensee, against claims of damage to property of the City of Alexandria caused by (i) the operation of the Vessel by Licensee or any agent or employee of Licensee, and (ii) any casualty or event involving Licensee's commercial charter service, the Vessel, or any agent, employee, invitee or guest of Licensee; and

(d) wreck removal insurance to cover the cost of removing the Vessel if it should sink or become awash, and the Licenser shall be named beneficiary of such policy.

Licensee agrees to maintain such insurance coverage throughout the term of this Agreement, and to furnish evidence to the Licenser of such coverage prior to the effective date, and throughout the term, of this agreement. In addition, Licenser shall be named on the liability insurance policy required by subsection (b) as an additional insured. In the event Licensee is unable to obtain the insurance required by subsection (b) that names Licenser as an additional insured, or the insurance required by subsection (c), or both, Licensee agrees to indemnify and hold Licenser harmless against all of the claims identified in subsection (b) or against all losses incurred by Licenser that are identified in subsection (c), or against both such claims and such losses, as the case may be.

5. Indemnification. Subject to the dollar limitations set out in paragraph 4, above, Licensee agrees to indemnify and hold harmless the Licenser and all of its officers, employees and

agents from and against all suits, actions, causes of action, damages, claims, liability and expenses (including court costs and attorney's fees), and against any losses, resulting from or arising out of any bodily injury or property damage caused, in whole or in part, by any act or omission of the Licensee or its employees, agents, invitees, licensees or guests in the course of operating, maintaining or using the Vessel while located within or approaching or departing the Alexandria Marina.

6. Waiver of Licensors Liability. By executing this Agreement, Licensee expressly acknowledges and agrees that the Licensors and its officers and employees shall not be liable to Licensee or to any of its employees, agents, invitees, licensees or guests for any bodily injury or property damage sustained by any of them while on Licensee's Vessel or while at or on the Alexandria Marina, or for any property damage to Licensee's Vessel sustained while the Vessel is in or is approaching or departing the Marina, except to the extent such injury or damage is caused by the negligence of the Licensors or its officers or employees.

7. Grant and Term of License.

(a) In exchange for the consideration described herein, Licensors grants permission to Licensee to operate the Vessel as a commercial charter vessel from a berth ("Berth") located at the east end of the facility at the Alexandria Marina commonly known as the North Pier. Such operation shall include securing the Vessel at the Berth when it is not sailing and access to the Vessel across the North Pier for the Vessel's passengers, crew and service personnel. In exchange for such license, Licensee agrees to pay the fees described in paragraph 9 below. Licensee further agrees to provide to other boats reasonable access to the sewage pumping facilities installed at the east end of the North Pier and blocked by the Vessel when it is secured to the east end of the North Pier. The parties may negotiate in the future a commuter taxi

service and/or other service between the Alexandria Marina and destinations in the District of Columbia, Maryland and Virginia, subject to approval by the City Manager.

(b) The term of this license shall be from July 1, 2005, through December 31, 2009. As of July 1, 2005, this Agreement shall replace and supersede any and all existing agreements between the Licensor and the Licensee regarding the Vessel.

(c) Provided that Licensor is not in default hereunder at the termination of the License on December 31, 2009, Licensee, shall have upon expiration of the Agreement, the first right to negotiate a new license agreement for a term of three (3) years, (i.e. January 1, 2010 terminating on December 31, 2013).

8. Limitations upon use of Berth.

(a) Use of the Berth shall be dependent upon the scheduling of other vessels or waterfront activities, dredging, pier construction and other waterfront construction and harbor improvements by the Licensor.

(b) In the event that Licensor must make use of the Berth to accommodate visiting vessels or waterfront events, Licensor shall give Licensee written notice at least 90 days in advance of the date(s) of such use. If visiting vessels or waterfront events require the moving of the Vessel, Licensee may dock the Vessel at the Founders Park T-pier, at the end of the North Pier, or alongside the dolphins adjacent to the North Pier, if one of these locations are available. If Licensee has actually booked and confirmed a charter tour for the date of the Licensor's intended use of the Berth, Licensor shall use its best efforts to locate an alternate docking facility suitable for loading and discharging passengers. However, if Licensor is unable to locate such an alternate facility, then Licensee shall be responsible for finding an alternate location.

For each day that Licensee is unable to berth at the Marina because of the events, activities or occurrences referred to in this subsection (b), Licensee shall be entitled to reduce its annual license fee by the amount of the actual costs incurred by Licensee as the result of such relocation. Licensee shall provide Licensor with documentary evidence in the form of receipts, invoices and other similar documents to for all such costs claimed. Such documentary evidence shall be submitted to Licensor no later than 60 days from the date of the relocation.

(c) As used in this Agreement, the term "major casualty" shall mean a fire or other casualty loss to the Berth or any other part of the Marina that results in Licensee being unable to use the Berth for more than fourteen consecutive days. In the event of a major casualty, either Licensor or Licensee shall have the option (exercisable by written notice to the other party given within fourteen days after the date that the major casualty occurs) to terminate this agreement. The termination shall become effective seven days after the date of the written notice. If, following a major casualty, this agreement is not terminated as provided above, then for each day that Licensee is deprived of the use of the Berth as the result of the major casualty, Licensee shall be entitled to reduce its payment of the License Fee for such year by the amount of the per diem credit applicable to that year, as set forth in subparagraph 10(a) above.

(d) Licensee and the director of Licensor's Department of Recreation, Parks and Cultural Activities shall confer on the scheduling of visiting vessels and waterfront activities on February 1, June 1, and October 1 of each year, or on another date within five (5) days of such date as shall be mutually agreeable. During the period between such conferences, Licensor and Licensee shall give each other written notice of all changes, additions and deletions to their respective schedules as soon as they are determined. Additional conferences concerning scheduling may be held at mutually agreeable times.

(e) Licensee shall be responsible for the payment of all utility services furnished to Licensee or the Vessel at the Berth.

(f) No alcoholic beverages shall be served aboard the Vessel while docked more than fifteen (15) minutes prior to the scheduled sailing time.

9. License Fee.

(a) Licensee shall pay to Licensor an annual fee for berthing the Vessel at the Alexandria Marina and for the license to operate a commercial service utilizing the Vessel. This fee shall be \$23,455 for the period July 1, 2005, through and including June 30, 2006; \$ 24,041 for the period July 1, 2006, through and including June 30, 2007; \$ 24,642 for the period July 1, 2007, through and including December 30, 2008; \$ 25,258 for the period July 1, 2008 through and including June 30, 2009; \$12,945 for the period July 1, 2009 through and including December 31, 2009. The annual fee shall be paid in 12 equal installment payments, with the exception of the final period (July 1, 2009 through and including December 31, 2009), these payments shall be paid in 6 equal installment payments. Each installment payment shall be due and payable on the first business day of each month of the term of this Agreement.

(b) If Licensee fails to pay in full any License Fee payment within ten (10) calendar days of the payment's due date, Licensee shall be liable for a penalty, equal to 10 percent of the amount unpaid. Any such penalty shall be due at the next installment due date.

10. Assignment. This license may not be assigned by the Licensee without the consent of Licensor, which consent shall not be unreasonably withheld but which may require action by the Alexandria City Council. Licensor further agrees to Licensee's assignment of this license to a corporation, partnership, or similar entity that controls or is controlled by Licensee. For purposes

of this section, "control" shall mean the ownership of at least fifty (50) percent of the voting interests in an entity.

11. Termination. In the event that Licensee violates any of the terms of this agreement, Licensee shall be considered in default. If such default continues for thirty (30) days after Licensee has received written notice of the default, then this agreement may be terminated, effective immediately, by Licensor. Notwithstanding the above, Licensor shall have the right to terminate this agreement, effective immediately, in the event that Licensee shall be adjudicated a bankrupt, or if a receiver is appointed in a legal proceeding of any kind to take possession of the assets of Licensee, or if any creditor of Licensee shall seize, take possession of or foreclose upon the Vessel. Licensor shall also have the right to terminate this agreement, effective immediately, if Licensee fails to maintain all of the types of insurance required by section 4 of this agreement.

12. Removal. If this license is terminated, the Vessel shall be immediately removed from and cease utilizing the Alexandria Marina and any alternate docking facility owned by Licensor. If it becomes necessary for Licensor to remove or cause the removal of the Vessel through any legal proceeding, or otherwise, then the Licensor shall be entitled to recover all costs incurred in conjunction with such proceeding, including attorney's fees, from the Licensee and any successor in interest in ownership or possession of the Vessel, and such liability shall be joint and several.

13. Applicable Law. This agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

14. Description. The Vessel is a sternwheel, diesel powered vessel, 90 feet in length and 33 feet of beam. It is named the "Cherry Blossom."

15. Use of Vessel. The Vessel shall be used solely and exclusively for private receptions or tours on a pre-use charter basis and shall not be used as an eating or other establishment open to members of the general public on a pre-use, per person or a non-pre-use, per person basis; provided, that the Vessel may, on no more than eight (8) occasions a year with a frequency of no more than once in any calendar month, be made available to members of the general public on a pre-use, per person basis; and provided further, that the Vessel may, on no more than four occasions a year, be made available to members of the general public on a pre-use, per person or a non-pre-use, per person basis when Licensee has leased or otherwise made the Vessel available to a non-profit organization which has contracted to use the Vessel for a fundraising purpose and whose proposed use of the Vessel has been reviewed and approved in advance by the director of the city's Department of Recreation, Parks and Cultural Activities. For purposes of this section, "pre-use, per person basis" shall mean that the Vessel has not been chartered by one entity or individual on behalf of or for the use of numerous individuals but that each individual using the Vessel has arranged for the use himself or has had his use arranged by another individual in his party, and has paid for his use or has had his use paid prior to the day of his boarding. For purposes of this section, "non-pre-use, per person basis" shall mean that the Vessel has not been chartered by one entity or individual on behalf of or for the use of numerous individuals, but that each individual using the Vessel has arranged for the use himself or has had his use arranged by another in his party, and has paid for his use or has had his use paid on the day of his boarding.

16. Fuel. The Vessel shall not take on gasoline or other fuel when it is docked at the Berth.

17. Provisions and Appearance. Licensee agrees to provision the Vessel at such time and in such manner as to minimize the adverse impact upon businesses, their invitees and guests, and members of the general public on or adjacent to the Alexandria Marina. Licensee shall require all vendors and service personnel who supply goods or render services to the Vessel, or who engage in any activity related to the use or maintenance of the Vessel, to use the loading zone in Thompson's Alley and to make every effort avoid use of the North Pier for such activities. Licensee shall not engage in any activity which results in visual clutter, foul odors, the accumulation of litter or debris on the North Pier or in the waters adjacent to the Berth, or such other conditions which the Licensor may, in its sole discretion, deem inconsistent with the use and enjoyment of the Alexandria Marina. Licensee shall not place any signs, advertisements or notices of any nature, on any part of the exterior portion or any bulkhead, window or door of the Vessel, or on any part of the dock of the Alexandria Marina, without Licensor's consent and without such sign, advertisement or notice complying with all applicable law, including the City of Alexandria Zoning Ordinance, which shall be deemed applicable to the Vessel for the purposes of this section. However, Licensee may temporarily place on the exterior of the Vessel banners or signs bearing the name, motto, logo or insignia of a group that has chartered the Vessel on the date of the charter.

18. Utility and Service Cost. Licensee shall pay the cost of all utilities, with the exception of water, consumed or utilized by the Vessel. If Licensee is not billed directly by the utility, Licensor shall provide Licensee with invoices for monthly utility usage, and Licensee shall pay such invoices or reimburse Licensor for such invoices, as the case may be, within 30 days of receipt.

19. Refuse. Licensee shall arrange and pay for the prompt and continuous removal from the North End Pier of all litter, debris and refuse generated by the Vessel and its employees, agents, invitees, licensees or guests. Licensee further agrees that, if it should fail to fulfill its obligations under this section, as determined by Licensor in its sole discretion, Licensor may arrange and pay for such collection of litter, debris and refuse. Licensee shall, upon demand by Licensor, reimburse Licensor for expenses incurred for such collection of refuse within 30 days of Licensee's receipt of a billing statement issued by Licensor and itemizing such expenses.

IN WITNESS WHEREOF, the parties hereto have executed this agreement.

POTOMAC RIVERBOAT COMPANY, LLC.

Date: _____

By: _____
Willem Polak, President

CITY OF ALEXANDRIA

Date: _____

By: _____
James K. Hartmann, City Manager

LICENSE AGREEMENT

THIS AGREEMENT is made this _____ day of _____, 2005, by the City of Alexandria, a municipal corporation of Virginia (the "Licensor"), and the Potomac Riverboat Company, LLC., (the "Licensee").

WHEREAS, Licensee is the operator of the tour boat Miss Christin and desires to operate a sightseeing tour boat service, using the vessel from the Alexandria Marina in the City of Alexandria, Virginia to provide tour boat service to the Mount Vernon Estate; and

WHEREAS, Licensor owns the Alexandria Marina which is suitable for docking boats;

WHEREAS, Licensor and Licensee had an agreement to permit Licensee to use the Alexandria Marina for the purposes stated above from July 1, 2002 through and including June 30, 2007;

WHEREAS, Licensor is willing to permit Licensee to use the Alexandria Marina for docking purposes and for passenger and service access in accordance with the terms and conditions set forth below;

WHEREAS, in accordance with City Council's directive on December 14, 2004, to bring the terms of all license agreements between Licensor and Licensee consistent, as applicable to the terms of the license agreements approved by City Council on December 14, 2004, for the Admiral Tilp and the Matthew Hayes, the parties agree to amend the existing license agreement for the Miss Christin;

NOW, THEREFORE, in consideration of the premises, the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Representations. By executing this agreement, the Licensee warrants that it is the legal operator of the vessel described in section 13 below (the "Vessel") and is authorized to enter into this agreement.

2. Applicability of City, State and Federal Law. This agreement is subject to title 6, chapter 3 of the Alexandria City Code and all applicable provisions of federal, State and local law. In particular, this agreement is subject to, and Licensee shall comply with the criminal, fire, health and safety laws of the City of Alexandria and the Commonwealth of Virginia pertaining to the operation of the Vessel. Licensee shall permit officers and employees of the City of Alexandria charged with the enforcement of such laws to board and inspect the Vessel for the purpose of enforcing such laws.

3. Rules and Regulations. Licensee shall comply with all applicable rules and regulations of the City of Alexandria, including Rules and Regulations of the Alexandria Marina which are set forth in Attachment A to this agreement and which are incorporated by reference into this agreement as if fully set forth herein. The Licensee shall also comply with any rules and regulations of the City or of the Alexandria Marina which are adopted subsequent to the execution of this agreement unless such rules are manifestly unreasonable in their application to Licensee.

4. Insurance. Licensee shall certify to the satisfaction of the Licenser that the Licensee and the Vessel are covered by:

(a) property damage insurance in an amount sufficient to replace the Vessel in case of its total destruction;

(b) liability insurance in an amount not less than \$1,000,000 per person per occurrence and \$3,000,000 in the aggregate per occurrence which insures the Licensee against claims of

personal injury and property damage arising from the negligent operation of the Vessel by the Licensee or Licensee's agents and employees;

(c) insurance in the amount of not less than \$1,000,000 per occurrence which insures Licensee, regardless of fault or negligence by Licensee or any agent or employee of Licensee, against claims of damage to property of the City of Alexandria caused by (i) the operation of the Vessel by Licensee or any agent or employee of Licensee, and (ii) any casualty or event involving Licensee's sightseeing tour boat service, the Vessel, or any agent, employee, invitee or guest of Licensee; and

(d) wreck removal insurance to cover the cost of removing the Vessel if it should sink or become awash, and the Licenser shall be named beneficiary of such policy.

(e) Licensee agrees to maintain such insurance coverage throughout the term of this agreement, and to furnish evidence to the Licenser of such coverage prior to the effective date, and throughout the term, of this agreement. In addition, Licenser shall be named on the liability insurance policy required by subsection (b) as an additional insured. In the event Licensee is unable to obtain the insurance required by subsection (b) that names Licenser as an additional insured, or the insurance required by subsection (c), or both, Licensee agrees to indemnify and hold Licenser harmless against all of the claims identified in said subsection (b) or against all losses incurred by Licenser that are identified in said subsection (c), or against both such claims and such losses, as the case may be.

5. Indemnification. Subject to the dollar limitations set out in subsection 4(b), Licensee agrees to indemnify and hold harmless the Licenser and all of its officers, employees and agents from and against all suits, actions, causes of action, damages, claims, liability and expenses (including court costs and attorney's fees), and against any losses, resulting from or arising out of any bodily injury or property damage caused, in whole or in part, by any act or omission of the Licensee or its employees,

agents, invitees, licensees or guests in the course of operating, maintaining or using the Vessel while located within or approaching or departing the Alexandria Marina.

6. Waiver of Licensors Liability. By executing this agreement, Licensee expressly acknowledge and agrees that the Licensors and its officers and employees shall not be liable to Licensee or to any of its employees, agents, invitees, licensees or guests for any bodily injury or property damage sustained by any of them while on Licensee's Vessel or while at or on the Alexandria Marina, or for any property damage to Licensee's Vessel sustained while the Vessel is in, approaching or departing the Marina, except to the extent such injury or damage is caused by the negligence of the Licensors or its officers or employees.

7. Grant and Term of License.

(a) In exchange for the consideration described herein and upon the conditions described herein, Licensors grants to Licensee a license to operate, on a regular basis, a tour boat service providing tour service to the Mount Vernon Estate, using the Vessel from the berth (described in subsection (b), below) for the term of the Agreement. The parties may negotiate in the future a commuter taxi service and/or other service between the Alexandria Marina and destinations in the District of Columbia, Maryland and Virginia, subject to approval by the City Manager.

(b) Licensee shall be permitted to use the berth at the City's Marina's North Pier shown in the drawing attached hereto as Attachment B ("Berth").

(c) In exchange for the Licensors grant of permission to operate a sightseeing tour boat service and to berth the Vessel at the Alexandria Marina, Licensee agrees that, throughout the term of this Agreement, it will operate a sightseeing tour boat service, using the Vessel, at least 14 times a

week in the period from May 1 through August 31, weather and condition of the Vessel permitting, and will pay the fees described in section 8 below.

(d) The term of this license shall be from July 1, 2005, to and including December 31, 2009.

(e) Provided that the Licensee is not in default hereunder at the termination of the Agreement on December 31, 2009, Licensee, shall have upon expiration of the Agreement, the first right to negotiate a new license agreement for the provision of sightseeing tourboat service between the City Marina and the Mount Vernon Estate for a term of three (3) years, (i.e. January 1, 2010 terminating on December 31, 2013).

(f) On or about July 1, 2005, this Agreement shall replace the existing agreement between Licensor and Licensee regarding the Vessel.

8. Annual Fee.

(a) Licensee shall pay to Licensor an annual fee for berthing the Vessel at the Alexandria Marina and for the license to operate a sightseeing tour boat service from the Alexandria Marina to the Mount Vernon Estate. This fee shall be \$16,775 for the period July 1, 2005 through and including June 30, 2006; \$17,194 for the period July 1, 2006 through and including June 30, 2007; \$17,624 for the period July 1, 2007 through and including June 30, 2008; \$18,065 for the period July 1, 2008 through and including June 30, 2009 and \$9,258 for the period July 1, 2009, through and including December 31, 2009. The annual fee shall be paid in twelve (12) monthly installments, to be paid on or before the 1st day of each month for which payment is due.

(b) Notwithstanding the prior provisions of subsection (a), Licensor agrees to credit an amount equal to any personal property taxes paid with respect to the Vessel (but not any other

vessel) to the City of Alexandria toward the annual fees required by this section; provided, that Licensee shall not receive any credit for personal property taxes due in any calendar year that are attributable to the portion of the Vessel's assessed value in excess of \$150,000. Any credit provided under this subsection shall be provided in the form of a waiver of the monthly payments (up to the total amount of the credit for taxes) otherwise due under subsection (a) after the payment of such taxes. Licensee and Licensors shall jointly calculate the number of monthly payments, including any part of a monthly payment, that shall be waived in order to provide the credit referred to in this subsection.

(c) In the event the Vessel, during its operating season, is, for mechanical reasons that are beyond the capacity of Licensee to repair, unable to operate as a sightseeing tour boat for more than seven consecutive days, then, for each such consecutive-day period of eight or more days, Licensee shall be entitled to a reduction in the installment payment next due following the end of said period in an amount equal to $(X/183) \times (Y)$, where X represents the total number of days during which the Vessel is out of service in the consecutive-day period and Y represents one-half of the annual personal property taxes on the Vessel that has not recently been paid by Licensee.

(d) If Licensee fails to pay any installment in full within ten calendar days of the installment's due date, Licensee shall be liable for a penalty equal to 10 percent of said installment, plus interest, based upon the amount unpaid and a rate of 10 percent per annum (compounded annually), from the due date. Any such penalty and interest shall be due at the next installment due date.

9. Assignment. This license may not be assigned by the Licensee without the consent of Licensors, which consent shall not be unreasonably withheld but which may require action by the Alexandria City Council.

10. Termination. In the event that Licensee violates any of the terms of this agreement, Licensee shall be considered in default. If such default continues for 30 days after Licensee has received written notice of the default, then this license may be terminated, effective immediately, by Licensor. Notwithstanding the above, Licensor shall have the right to terminate this license, effective immediately, in the event Licensee shall be adjudicated a bankrupt, or if a receiver is appointed in a legal proceeding of any kind to take possession of the assets of Licensee, or any creditor of Licensee shall seize, take possession of or foreclose upon the Vessel. Licensor shall also have the right to terminate this agreement, effective immediately, if Licensee fails to maintain all the types of insurance required by section 4 of this agreement.

11. Removal. If this license is terminated, the Vessel shall be immediately removed from and cease utilizing the Alexandria Marina and any alternate docking facility owned by Licensor. If it becomes necessary for Licensor to remove or cause the removal of the Vessel through any legal proceeding, or otherwise, then the Licensor shall be entitled to recover all costs incurred in conjunction with such proceeding, including attorney's fees, from the Licensee and any successor in interest in ownership or possession of the Vessel, and such liability shall be joint and several.

12. Applicable Law. This agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

13. Vessel. The Vessel subject to this agreement is named the Miss Christin ("Vessel"). The Vessel is 64 feet 10 inches in length and 20 feet in width. In the event Licensee wishes to replace the Vessel with another vessel during the term of this agreement, it may do so, provided the following conditions are met: (i) the replacement vessel will not exceed 95 feet in length or 25 feet in width; (ii) Licensor consents to the replacement; and (iii) Licensor and Licensee agree upon the assessed value of

the replacement vessel solely to reflect any increase or decrease in the value of the replacement vessel over the value of the current vessel, and the consequent increase or decrease in personal property taxes associated with the replacement vessel. If these conditions are met, the replacement vessel shall, for purposes of this agreement, be considered the Vessel.

14. Special Conditions of License.

(a) Trash Removal and Disposal. Licensee shall provide convenient on-board trash receptacles for use by passengers and crew and shall, at its own expense, regularly remove and dispose of all trash and debris from the operation of its sightseeing tour boat service. No trash or debris shall be deposited on any part of the Alexandria Marina by Licensee. If Licensee should fail to fulfill its obligations under this section, as determined by Licensor, and in its sole discretion, Licensor may arrange and pay for such collection of litter, debris and refuse. Licensee shall, upon demand by Licensor, reimburse Licensor for expense incurred for such collection of refuse within 30 days of Licensee's receipt of a billing statement issued by Licensor itemizing such expenses.

(b) Utility and Service Costs. Licensee shall pay the cost of all utilities, with the exception of water, consumed or utilized by the Vessel. If Licensee is not billed directly by the utility, Licensor shall provide Licensee with invoices for monthly usage, and Licensee shall pay such invoices or reimburse Licensor for such invoices, as the case may be, within 30 days of receipt.

(c) Waterfront Events. Use of the Berth shall be dependent upon the scheduling by Licensor of waterfront upkeep and maintenance activities, dredging activities, pier construction, repair and renovation activities, and other waterfront construction and harbor improvement, activities, plus any emergency repairs or events that restrict access of the Vessel to the Berth (collectively, "Waterfront Events"). If a Waterfront Event requires the moving of the Vessel, Licensor will attempt to locate

another docking location for Licensee but, if Licensor fails to do so, then Licensee shall be responsible for finding an alternate docking location. If a Waterfront event renders Licensee unable to use the Berth for the purpose of embarking or disembarking passengers, Licensor will use its best efforts to locate an alternate docking facility suitable for loading and discharging passengers. For each day per calendar month between March 31 and November 1 of any year, that Licensee is unable to tie up to the Berth during normal hours of operation because of a Waterfront Event, Licensee be entitled to reduce its monthly payment of the license fee for such month on a per-diem basis. The per diem credit allowed for each such day shall be calculated by dividing the annual license fee for that year by 365 (current annual license fee/365 days).

(d) Parking. Licensee shall take all reasonable efforts to advise passengers of the Service to avoid on-street parking in the City, including, without limitation, providing Passengers and their agents with maps and directions to off-street parking facilities in the City and making such maps and directions available at Licensor's office and on board the Vessel.

(e) Navigation Hazard. Whenever Licensor shall reasonably determine that the Vessel presents a navigational hazard if berthed at the assigned berth, the Vessel shall be berthed at another location. In such event, unless Licensor further reasonably determines that such operation of the Service also presents a navigational hazard, Licensor shall be permitted to embark and disembark passengers at the berth. If Licensor makes such further determination, Licensor shall use its best efforts to make reasonable arrangements for the Service to continue from another location at the Marina.

(f) Signs. Licensee shall not erect or maintain any sign in conjunction with or calling attention to the Service unless approval for such sign has been obtained from Licensor and, if applicable, the Alexandria Board of Architectural Review.

(g) Refueling. Refueling operations are prohibited from taking place at the North Pier.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

CITY OF ALEXANDRIA, a municipal
Corporation of Virginia

Date: _____

By: _____
James K. Hartmann, City Manager

POTOMAC RIVERBOAT COMPANY, LLC.

Date: _____

By: _____
Willem Polak, President

LICENSE AGREEMENT

THIS AGREEMENT is made this _____ day of _____, 2005, by the City of Alexandria, a municipal corporation of Virginia (the "Licensor"), and the Potomac Riverboat Company (the "Licensee").

WHEREAS, Licensee is the owner of the "Miss Mallory" and desires to operate a sightseeing tour boat service ("Service"), using the "Miss Mallory," from the Alexandria Marina in the City of Alexandria, Virginia; and

WHEREAS, Licensor owns the Alexandria Marina which is suitable for docking boats;

WHEREAS, Licensor and Licensee have an existing license agreement the terms of which are from January 1, 2002 through and including January 1, 2007;

WHEREAS, in consideration of the directive of City Council on December 14, 2004, to bring the terms of all license agreements between Licensor and Licensee consistent, as applicable, to the terms of the license agreements approved by City Council on December 14, 2004, for the Admiral Tilp and the Matthew Hayes, the parties agree to amend the existing license agreement for the Miss Mallory; and

WHEREAS, Licensor is willing to permit Licensee to use the Alexandria Marina for docking purposes in accordance with the amended terms and conditions set forth below;

NOW, THEREFORE, it is mutually agreed as follows:

1. Representations. By executing this Agreement, the Licensee warrants that it is the legal owner of the vessel described in paragraph 14 below (the "Vessel") and is authorized to enter into this Agreement.

2. Applicability of City, State and Federal Law. This Agreement is subject to title 6, chapter 3 of the Alexandria City Code and all applicable provisions of federal, state and local law. In particular, this Agreement is subject to, and Licensee shall comply with, the criminal, fire, health and safety laws of the City of Alexandria and the Commonwealth of Virginia pertaining to the operation of the Vessel. Licensee shall permit officers and employees of the City of Alexandria charged with the enforcement of such laws to board and inspect the Vessel for the purpose of enforcing such laws.

3. Rules and Regulations. Licensee shall comply with the Rules and Regulations of the Alexandria Marina, including any amendments which may be adopted during the term of this Agreement. The current Rules and Regulations are set forth in Attachment A to this Agreement and are incorporated by reference into this agreement as if fully set forth herein.

4. Insurance. Licensee shall provide a certificate of insurance to the Licensor that shows that Licensee and the Vessel are covered by:

(a) property damage insurance in an amount sufficient to replace the Vessel in case of its total destruction;

(b) liability insurance in an amount not less than \$1,000,000 per person per occurrence and \$3,000,000 in the aggregate per occurrence which insures the Licensee (i) against claims of personal injury and property damage arising from the negligent operation of the Vessel by the Licensee or Licensee's agents and employees;

(c) insurance in the amount of not less than \$1,000,000 per occurrence which insures Licensee, regardless of fault or negligence by Licensee or any agent or employee of

Licensee, against claims of damage to property of the City of Alexandria caused by (i) the operation of the Vessel by Licensee or any agent or employee of Licensee, and (ii) any casualty or event involving Licensee's sightseeing tour boat service, the Vessel, the floating access platform (as discussed below in paragraph 15), or any agent, employee, invitee or guest of Licensee; and

(d) wreck removal insurance to cover the cost of removing the Vessel if it should sink or become awash, and the Licenser shall be named beneficiary of such policy.

Licensee agrees to maintain such insurance coverage throughout the term of this Agreement, and to furnish evidence to the Licenser of such coverage prior to the effective date, and throughout the term, of this agreement. In addition, Licenser shall be named on the liability insurance policy required by subparagraph (b) as an additional insured. In the event Licensee is unable to obtain the insurance required by subparagraph (b)(ii) that names Licenser as an additional insured, or the insurance required by subparagraph (c), or both, Licensee agrees to indemnify and hold Licenser harmless against all of the claims identified in said subparagraph (b)(ii) or against all losses incurred by Licenser that are identified in said subparagraph (c), or against both such claims and such losses, as the case may be.

5. Indemnification. Subject to the dollar limitations set out in paragraph 4, above, Licensee agrees to indemnify and hold harmless the Licenser and all of its officers, employees and agents from and against all suits, actions, causes of action, damages, claims, liability and expenses (including court costs and attorney's fees), and against any losses incurred by Licenser, resulting from or arising out of any act or omission of the Licensee or any of its employees, agents, invitees, licensees or guests in the course of operating, maintaining or using the Vessel

while located within or approaching or departing the Alexandria Marina or in the course of using the float.

6. Waiver of Licensors Liability. By executing this Agreement, Licensee expressly acknowledges and agrees that the Licensors and its officers and employees shall not be liable to Licensee or to any of its employees, agents, invitees, licensees or guests for any bodily injury or property damage sustained by any of them while on Licensee's Vessel or while at or on the Alexandria Marina, or for any property damage to Licensee's Vessel sustained while the Vessel is in or is approaching or departing the Marina, except to the extent such injury or damage is caused by the negligence of the Licensors or its officers or employees.

7. Grant and Term of License.

(a) This Agreement grants non-exclusive permission for the Licensee to operate, on a regular basis, a Service using the Vessel from the Alexandria Marina for the term of this Agreement.

(b) Licensee shall be permitted to berth at Commercial 1 Berth 7, Torpedo Factory North Pier ("Berth"). The Berth may be used for vessel mooring and ancillary purposes only and may not be used for embarkation or disembarkation of passengers.

(c) The term of this Agreement shall be from July 1, 2005 through and including December 31, 2009 and this Agreement shall at July 1, 2005, replace the existing agreement between Licensors and Licensee regarding the Vessel.

(d) Provided that Licensors is not in default hereunder at the termination of the License on December 31, 2009, Licensee, shall have upon expiration of the Agreement, the first right to negotiate a new license agreement for a term of three (3) years, (i.e. January 1, 2010 terminating on December 31, 2013).

(e) The parties may negotiate in the future a commuter taxi service and/or other service between the Alexandria Marina and destinations in the District of Columbia, Maryland and Virginia, subject to approval by the City Manager.

8. Special Conditions of License.

(a) Commuting Restriction. No voyage commencing before 9:30 a.m. on Monday through Friday of any week shall discharge passengers at any place other than the North Pier. The parties expressly agree that this condition is intended to prevent use of the Service or the Vessel for commuting purposes.

(b) Hours of Use of Berth. From June through August, the Berth may only be used (i) for 14-hour maximum docking from 10:00 p.m. until 12:00 noon on the following day, starting on Monday at 10:00 p.m. and ending on Sunday at 12:00 noon, and (ii) for 38-hour maximum docking starting on Sunday at 10:00 p.m. and ending on Tuesday at 12:00 noon. Licensee may, with the approval of the dockmaster, vary the days of the week during which the Berth may be used for a continuous 38-hour period, as provided in subsection (ii) above, provided that unless otherwise approved by the dockmaster for an appropriate license fee there shall only be one such 38-hour period during each week. From September through May, the Berth may be used 24 hours per day, seven (7) days per week.

(c) Embarkation and Disembarkation. Passenger embarkation and disembarkation shall be permitted only at such locations at the Alexandria Marina, other than the Berth, as are determined to be available, and are approved by the dockmaster. Nothing contained in this Agreement shall be deemed to require Licensor to furnish to Licensee any location at the Alexandria Marina for embarkation or disembarkation of passengers. Notwithstanding the provisions of any other agreement for the use of a commercial berth at the

Alexandria Marina, upon the agreement of the dockmaster, on behalf of Licensor, and the other party to such agreement, Licensee may use the commercial berth which is the subject of such other agreement for embarkation or disembarkation of passengers, subject to the restrictions contained in this paragraph. In no event shall Licensee permit passengers to embark between the hours of midnight and 9:00 a.m. on the following day. The final disembarkation of passengers on each day of operation shall be no later than midnight.

(d) Trash Removal and Disposal. Licensee shall provide convenient on-board trash receptacles for use by clients of the Service and shall, at its own expense, regularly remove and dispose of all trash and debris from the operation of the Service. No trash or debris shall be deposited on any part of the Alexandria Marina by Licensee. If Licensee should fail to fulfill its obligations under this section, as determined by Licensor and in its sole discretion, Licensor may arrange and pay for such collection of litter, debris and refuse. Licensee shall, upon demand by Licensor, reimburse Licensor for expenses incurred for such collection of refuse within 30 days of Licensee's receipt of a billing statement issued by Licensor itemizing such expenses.

(e) Navigation Hazard. Whenever Licensor shall reasonably determine that the Vessel presents a navigational hazard if berthed at the Berth, the Vessel shall be berthed at another location. In such event, unless Licensor further reasonably determines that such operation of the Service also presents a navigational hazard, Licensor shall be permitted to embark and disembark passengers at the Berth. If Licensor makes such further determination, Licensor shall use its best efforts to make reasonable arrangements for the Service to continue from another location at the Marina.

(f) Refueling. Refueling operations are prohibited from taking place at the North Pier.

(g) Signs. Licensee shall not erect or maintain any sign in conjunction with or calling attention to the Service unless the sign complies with applicable provisions of the Alexandria Zoning Ordinance, and approval for such sign has been obtained from Licensor and, if applicable, the Alexandria Board of Architectural Review.

9. License Fee.

(a) Licensee shall pay to Licensor an annual fee for the license granted under this agreement. Licensee shall pay to Licensor an annual fee of \$9,000.00, payable at the rate of \$750.00 per month for the periods, January 1, 2005 through and including December 31, 2005, January 1, 2006 through December 31, 2006. On January 1, 2007, the annual license fee shall be \$9,225.00, payable at the rate of \$ 769.00 per month. On January 1, 2008, the annual license fee shall be \$9,456.00, payable at the rate of \$788.00 per month. On January 1, 2009, the annual license fee shall be \$9,692.00, payable at the rate of \$808.00 per month. All monthly payments shall be rendered in advance, on the first business day of the month on which such fee is due.

(b) Licensee shall not be entitled to any reduction in the license fee in the event the Berth is not occupied by the Vessel or Licensee does not conduct Service from the Alexandria Marina.

(c) If Licensee fails to pay any installment in full within ten calendar days of the installment's due date, Licensee shall be liable for a penalty, equal to 10 percent of said installment, plus interest, based upon the amount unpaid and a rate of 10 percent per annum (compounded annually), from the due date. Any such penalty and interest shall be due at the next installment due date.

10. Waterfront Events. Use of the Berth shall be dependent upon the scheduling by Licensor of waterfront upkeep and maintenance activities, dredging activities, pier construction,

repair and renovation activities, any other waterfront construction and harbor improvement activities, and any emergency repairs or events that restrict access of the Vessel to either Berth (collectively, "Waterfront Events"). If a Waterfront Event requires the moving of the Vessel, Licensor will attempt to locate another docking location for Licensee but if Licensor fails to do so, then Licensee shall be responsible for finding an alternate docking location. If a Waterfront Event renders Licensee unable to use Berth 2 for the purpose of embarking or disembarking passengers, Licensor will use its best efforts to locate an alternate docking facility suitable for loading and discharging passengers. For each day in excess of two (2) per calendar month between May 1 and Labor Day that Licensee is unable to use a docking location at the Alexandria Marina during normal hours of operation because of a Waterfront Event, Licensee shall be entitled to the pro rata reduction of its monthly payment of the License Fee.

11. Assignment. This license may not be assigned by the Licensee without the consent of Licensor, which consent shall not be unreasonably withheld but which may require action by the Alexandria City Council.

12. Termination. In the event that Licensee violates any of the terms of this Agreement, Licensee shall be considered in default. If such default continues for 30 days after Licensee has received written notice of the default, then this license may be terminated, effective immediately, by Licensor. Notwithstanding the above, Licensor shall have the right to terminate this license, effective immediately, in the event Licensee shall be adjudicated a bankrupt, or if a receiver is appointed in a legal proceeding of any kind to take possession of the assets of Licensee, or if any creditor of Licensee shall seize, take possession of or foreclose upon the Vessel.

Either party may terminate this Agreement by providing written notice of termination to the other party in accordance with the provisions of paragraph 19, below.

13. Removal. If this license is terminated, the Vessel shall be immediately removed from and cease utilizing the Alexandria Marina and any alternate docking facility owned by Licensor. If it becomes necessary for Licensor to remove or cause the removal of the Vessel through any legal proceeding, or otherwise, then the Licensor shall be entitled to recover all costs incurred in conjunction with such proceeding, including attorney's fees, from the Licensee and any successor in interest in ownership or possession of the Vessel, and such liability shall be joint and several.

14. Vessel. The Vessel subject to this agreement is the "Miss Mallory," or any similar vessel having an overall length not to exceed sixty-five (65) feet and a width not to exceed twenty-five (25) feet; provided, that, for the purposes of this paragraph, "width" shall mean the sum of (i) the width at its widest point of the floating access platform that Licensee has constructed at Berth 2, (ii) the width of the open water that lies between the Vessel and the southern edge of said floating access platform when the Vessel is at Berth 2, and (iii) the width of the Vessel at its widest point.

15. Floating Access Platform.

(a) Licensor has permitted the Licensee to install a floating access platform ("float") at Berth 2, which float is the property of the Licensor. It shall be the sole responsibility of the Licensee, throughout the term of this agreement, and at its sole cost and expense, to maintain and repair, and if necessary to replace, the float; provided, however, that Licensor shall repair or, if necessary, replace the float where the need for such repair or replacement has been caused by any vessel other than the Vessel, or by normal wear and tear.

(b) The Licensor's dockmaster may allow other vessels to use the float; provided, that such use shall not interfere with Licensee's use of the float. The dockmaster shall use his best efforts not to permit any vessel greater than 15,000 pounds to use the float.

16. Parking. Licensee shall take all reasonable efforts to advise passengers of the Service to avoid on-street parking in the City, including, without limitation, providing passengers and their agents with maps and directions to off-street parking facilities in the City and making such maps and directions available at Licensee's office and on any vessels used under this license. Licensee shall also consider in good faith Licensee's participation in programs that call for retailers in Old Town Alexandria to provide financial incentives to their customers to use off-street parking facilities.

17. Utility and Service Costs. Licensee shall pay the cost of bringing or otherwise making available any utility service to the Vessel or the float, the cost of submetering any service providing utilities to the Vessel or the float, and the cost of all utilities, with the exception of water, consumed or utilized by the Vessel or the float. Licensor shall provide Licensee with invoices for monthly utility usage, and Licensee shall pay such invoices or reimburse Licensor for such invoices, as the case may be, within 30 days of receipt.

18. Cooperation and Noninterference. Licensee acknowledges that the Berth is located immediately adjacent to Commercial Berth 5, Torpedo Factory North Pier (the "Adjacent Berth"). To facilitate simultaneous use of the Berth and the Adjacent Berth, Licensee agrees that it shall use the Berth, and operate the Service from the Alexandria Marina, in a manner which will not unreasonably interfere with the use of the Adjacent Berth by any party granted a license or other permission by Licensor to use such Adjacent Berth. Licensee further agrees to cooperate directly with any such party in Licensee's use of the Berth, and operation of

the Service from the Alexandria Marina, consistently with the provisions of this paragraph 18. Such cooperation may include, but need not be limited to, coordination of schedules and prior notice of any extended period during with the Berth or Adjacent Berth, as applicable, will not be used. Licensor agrees to include in any agreement which permits the use of the Adjacent Berth provisions similar to those contained in this paragraph 18 in order to ensure that the Adjacent Berth will be used in a manner which will not unreasonably interfere with the use of the Berth, and the operation of the Service from the Alexandria Marina, by Licensee.

19. Notices. All notices, demands, or other communications that may be necessary or proper hereunder shall be deemed duly given if personally delivered upon delivery (or at such times as delivery is not accepted by the intended recipient), when deposited with Federal Express or other reputable overnight delivery service, when deposited in the United States mail, postage prepaid, first class, registered or certified, return receipt requested, or when sent by facsimile with a confirmation or receipt, addressed respectively as follows:

Licensor: City of Alexandria
Department of Recreation, Parks and
Cultural Activities
1108 Jefferson Street
Alexandria, Virginia 22314
Attention: Kirk Kincannon, or his successor

with a copy to: The City Attorney
301 King Street, Suite 1300
Alexandria, Virginia 222314

Licensee: Potomac Riverboat Company, LLC
205 The Strand
Alexandria, Virginia 22314
Attn: Willem L. Polak, President

Any party hereto may change its address for notice purposes hereunder by delivering written notice thereof to the parties in accordance with the foregoing provisions.

22. Applicable Law. This agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

CITY OF ALEXANDRIA, a municipal
corporation of Virginia

Date: _____

By: _____
James K. Hartmann, City Manager

POTOMAC RIVERBOAT COMPANY, LLC

Date: _____

By: _____
Willem Polak, President

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